HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE R. SUBHASH REDDY

WRIT APPEAL NO. 2215 OF 2005

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Between:

P. Parthasarthy.

…… Appellant/Petitioner

And

Mandal Revenue Officer,

Satyavedu Mandal, Satyavedu,

Chittoor District and others.

……Respondents/Respondents

:: JUDGMENT ::

Counsel for the Appellant : Sri Venugopal

Counsel for Respondent No. 1: Government Pleader for Revenue

Dated: 23-12-2005

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 27-10-2005 passed by the learned Single Judge in Writ Petition No. 23087 of 2005 whereby he refused to entertain the appellant's challenge to the pattadar passbooks issued by Mandal Revenue Officer, Satyavedu, Chittoor District (respondent No.1) in favour of respondents 2 to 4 under the A.P Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act') and relegated them to the remedy of appeal.

Sri Venugopal, learned counsel for the appellant argued that the learned Single Judge committed a serious error by relegating his client to the remedy of appeal ignoring that the said remedy is not an effective remedy. He submitted that the learned Single Judge should have entertained the writ petition because the action of respondent No.1 to issue Pattadar Pass Books in favour of respondents 2 to 4 without holding an enquiry in terms of Section 5(3) of the Act is nullity. Sri Venugopal then argued that the availability of alternative remedy cannot be treated as a constitutional bar to the exercise of power by the High Court under Article 226 of the Constitution of India. Learned counsel also criticized affidavit dated 09-12-2005 filed by K. Narsimhulu, S/o Krishnaiah, Mandal Revenue Officer, Satyavedu in this appeal by asserting that the officer concerned has gone overboard by questioning the very identity of his client as son of P.Kodandaiah @ Kodanda Reddy .

Learned Government Pleader for Revenue supported the order under challenge. He argued that the alternative remedy of appeal available to the petitioner under Section 5(5) is an effective alternative remedy of appeal and the learned Single Judge did not commit any error by refusing to entertain the appellant's challenge to the Pattadar Pass Books issued in favour of respondents 2 to 4.

We have thoughtfully considered the submissions/arguments of the learned counsel and perused the record and agree with the learned Government Pleader that the remedy of appeal available to the appellant is an effective alternative remedy. A reading of Section 5 makes it clear that it not only lays down the procedure for issuance of the Pattadar Pass Books, but also provides for amendment and correction thereof and entitles an aggrieved person to file appeal against the decision of the competent authority. Sub-section (5) lays down that any person aggrieved by the action of the competent authority can challenge the same by filing an appeal. This sub-section does not contain any such onerous condition for availing the remedy of appeal which may justify an inference that the remedy of appeal is not an effective remedy. Therefore, keeping in view the settled law that the High Court will not entertain a writ petition under Article 226 of the Constitution of India if an effective alternative remedy is available to the petitioner, we hold that the learned Single Judge did not commit any error by refusing to entertain the appellant's challenge to the Pattadar Pass Books issued in favour of respondents No.2 to 4.

In **A.V.Venkateshwaran v. R.S.Wadhwani** the Constitutional Bench of the Supreme Court while reiterating the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, exhaust the other remedies open to him under the law is not one which bars the jurisdiction of the High Court to entertain the petition but is a rule evolved by the Courts for the exercise of their discretion, observed as under:

> "The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Art.226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could,

therefore, be treated as void or non est and that in all other cases, Courts should not entertain petitions under Art.226, or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court".

In **Thansingh Nathmal v. Superintendent of Taxes** another Constitutional Bench of the Supreme Court considered the question relating to exercise of discretion by the High Court in entertaining a writ petition despite the availability of alternative remedy and held:

"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up".

In **Baburam v. Zilla Parishad** the Supreme Court carved out the following two exceptions to the rule of alternative remedy:

1. Where proceedings are taken before a Tribunal under a provision of law, which is ultra vires to the Constitution;

2. Where the impugned order has been made in violation of the rules of natural justice;

In **Champa Lal v. I.T.Commissioner**, **J.M.& Co. v.Agricultura I.T.officer, Assam**, **C.I.T. v. Ramendra Nath Ghosh**, **Swadeshi Cotton Mills Co. Ltd., v. Government of U.P.**, **Gujarat University v. N.U.Rajguru**, **State of H.P. v. Raja Mahendra Pal**, **L.L. Sudhakar Reddy v. State of A.P.**, **State of Bihar v. Jain Plastics & Chemicals Ltd.,**, **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**, **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,** the Supreme Court has applied the rule of alternative remedy in different situations. In **Harbanslal Sahnia**[12] (supra) the Supreme Court considered the situations in which the High Court may exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: I) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See *Whirlpol Corpn. V. Registrar of Trade Marks* { (1998) 8 SCC 1} The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings".

The appellant's case does not fall in either of the exceptions carved out by the Supreme Court to the rule of alternative remedy in **Baburam v. Zilla Parishad**[3] (supra) and **Harbanslal Sahnia**[12] (supra).

In the result, the appeal is dismissed. However, keeping in view the fact that the writ petition and writ appeal filed by the appellant have remained pending before this

Court, we allow him 15 days time from today to file appeal and direct that the same shall be entertained, heard and decided on merits by the appellate authority.

G.S.SINGHVI, CJ

R.SUBHASH REDDY, J

December 23, 2005

Ks/svs